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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,432	02/24/2004	Denis Alfred Gonzales	CM2600	8499

27752 7590 01/26/2005

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

ROSENTHAL, CASEY S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/785,432

Applicant(s)

GONZALES, DENIS ALFRED

Examiner

Casey Rosenthal

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Receipt is acknowledged of applicant's Remarks filed 12/6/2004.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Cavadini et al. (USPN 5,968,569). The claims are drawn to a chewable composition comprising a chewable base and a probiotic agent.

3. Cavadini et al. discloses a chewable composition comprising a chewable base and a probiotic agent (abstract). Also disclosed is the probiotic agent, *Bacillus coagulans*, which is a spore-forming lactic acid-producing microorganism that exhibits antagonistic properties against undesirable strains of microorganisms (column 1, lines 19-26; column 3, lines 3-33; example 1). Additionally, Cavadini et al. discloses the probiotic agent being of about 0.01% to about 10% total weight of the composition (column 6, lines 13-17). These disclosures render the claims anticipated.

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4. Though the reference is silent to the particular percentage of chewable base of claim 10, it is however the position of the examiner that the particular percentage of chewable base is inherent to the disclosures of Cavadini et al. As described in paragraph 3, the percentage of probiotic agent is disclosed in Cavadini et al. as being about .01% to about 10% total weight of the composition. Cavadini et al. also discloses the ingredients of the chewable base including starch, protein, fiber, fat, etc. as well as percentages by weight of some of these ingredients. It is disclosed that starch can be up to about 40% by weight (column 4, lines 14-15) and fiber is about 10% to about 20% by weight (column 4, lines 6-8). Thus, the combination of these ingredients fulfill the limitation in claim 10 whereby the chewable base is of about 10% to about 90% of the total weight of the composition. The particular percentage of chewable base is inherent to the disclosures of Cavadini et al. and renders the claim anticipated.

Conclusion

5. All claims remain rejected, no claims are allowed.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory

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period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Response to Arguments

7. Applicant's arguments filed 12/6/2004 have been fully considered but they are not persuasive. Applicant argues that:

- a. Under 35 U.S.C. § 102 a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference, and
- b. The formulation of the prior art, Cavadini et al. (USPN 5,968,569), is not chewable.

8. The examiner's position is that each and every element as claimed for the formulation has been shown. Also, the future anticipated use cannot impart patentability to a formulation. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Cavadini et al. has each ingredient claimed.

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9. The term chewable has been given its broadest interpretation, consistent with the definition imparted by the applicants within the specification. Chewable is a relative term requiring only that a patient place the formulation within the oral cavity and begin chewing. The destruction of the formulation does not rebut the position of the examiner that the formulation is chewable. See Cavadini et al. column 5, line 7 where the formulation is recognized as "edible".

10. It is noted that applicant fails to address the allegation of inherency regarding percentages.

Correspondence

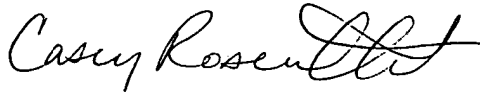
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Casey Rosenthal whose telephone number is 571-212-6097. The examiner can normally be reached on M-F from 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through

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Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Casey Rosenthal
Examiner
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THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600